First Nations' Project Team Report

Principal Report on New Social Assistance Legislation for First Nations in Ontario

May 1992

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Social Assistance Legislation Review

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March 16, 1992

Mr. Allan Moscovitch, Chair,
Advisory Group, Social Assistance Legislation,
School of Social Work, Room #469,
Carleton University,
Ottawa, Ontario, K1S 5B6.

Dear Mr. Moscovitch:

On behalf of the First Nations' Project Team, we are submitting this Report to the Minister's Advisory Group on New Social Assistance Legislation in Ontario.

The mandate of the First Nations' Project Team was to prepare a document that outlined the analysis, option(s) and strategies toward the development of social assistance legislation specific to First Nations in Ontario. In the development of this Report, we are reaffirming the four guiding principles enunciated in Resolution 91-34 of the All Ontario Chiefs' Assembly respecting social development for First Nations. These principles are that social services be:

1. First Nation Controlled
2. First Nation Determined
3. First Nation Specific
4. First Nation Based

The First Nations' Project Team Report was presented to the Chiefs of Ontario in a special assembly on Wednesday, March 4, 1992.

In consideration of the urgency and necessity of the Statement of Political Relationship between the Province and First Nations in Ontario, we anticipate that the recommendations outlined in the Report will be carried out expeditiously.

We would like to express our sincere gratitude to the Ontario First Nation Councils and Communities and the Ontario Native Welfare Administrators Association (O.N.W.A.A.), who generously gave us agenda time at their annual meeting for a preliminary consultation process.

We would also like to thank the following individuals for their assistance and sharing of their unique skills and technical expertise: John Stapleton, Manager, Legislation Development Section; Jim Loft, former chairperson; Linda Morgan, Administrative Support; and Tom Goff, writer and word wizard extraordinaire.

We would also like to express our appreciation to the First Nation representatives who served a dual role on the Team; providing their knowledge and experience as well as the necessary political linkage, thereby facilitating the critical process for First Nation consultation: Cynthia Jamieson, Six Nations Social Services Director; Joanne Sault, Chiefs of Ontario; Liz Dance, Nishnawbe-Aski Nation; Susan Barberstock, Union of Ontario Indians; Kay Taylor, past-president, Ontario Native Welfare Administrators' Association; Diane Thomas, Association of Iroquois and Allied Indians; and, for our spiritual guidance, wisdom and link to our cultural traditions, Ernie DeBassige, Elder.

Respectfully submitted,

Marie Tincombe-Shaw, Co-chair

Audrey Hill, Co-chair.

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Social Assistance Legislation Review Executive Summary

Background

Following release of the report of the Social Assistance Review Committee (SARC), *Transitions*, the Ontario Ministry of Community and Social Services created a Legislation Development Section within the Income Maintenance Branch to take action respecting SARC's recommendation to develop new social assistance legislation. Subsequently, an outside Advisory Group on new social assistance legislation was established to provide independent advice to the Minister. Six Project Teams were set up to support these activities.

Throughout this process, the government has been committed to consultation on issues of concern to First Nations. This second report of the First Nations' Project team attempts to clarify the underlying basis of historical First Nation concerns and proposes a legislative option that will provide a sound starting point for developing a lasting resolution to these concerns.

The Task of the First Nations' Project Team

Whereas the other project teams have had the task of developing legislative options for reform of particular aspects of the current social assistance system (eg. benefit structure, delivery and funding, etc.), the First Nations' Project Team has had to concern itself with the system as a whole as well as with its component elements. The reasons for this broader task lie, at one level, in facts which indicate clearly that the provincial system has not been effective on many reserves - and, at a second level, in facts which strongly suggest that this system cannot be effective simply because it is intimately rooted in cultural values and premises which are in many ways at odds with or fundamentally inconsistent with the basic values of First Nation cultures. To the extent that this is the case, **it is unlikely that a general reform of the system satisfactory to non-aboriginal communities will be sufficient finally to resolve long-standing First Nation concerns.**

The Basis of First Nation Concerns

In respect to the first point, it need only be noted that 67% of First Nations in Ontario (representing 54% of the on reserve population) have persistently experienced social assistance dependency rates above 20% (FBA and GWA) for the past twenty years. Only 6% of the First Nations have experienced rates of less than 10% over this period. A social assistance system designed to provide (primarily) temporary, short-term relief to individuals suffering through a

downturn or shift in the labour market is simply not a solution for individuals in the economic conditions experienced by most First Nations. **It has been argued cogently that the application of this system has, in fact, actually contributed to the persistence of individual and community level economic dependency, rather than acting as even a partial solution.**

In respect to the second point, it is gradually being acknowledged that the historical imposition of the Euro-Canadian, categorical social assistance system is a reflection of an ethnocentric viewpoint of the dominant society and part of the historical effort to assimilate First Nation members. This system, rooted as it is in the emergence of urban, industrial society, with its cultural focus on the individual and on the importance of self-reliant participation in a free labour market, stands in considerable contradiction to the general First Nation cultural focus on community and family and on work as an undifferentiated part of community life. The contradictions between the categorical system and the basic values and premises of First Nations' cultures on which it has been imposed helps to explain why social assistance has undermined rather than supported the economic viability of First Nation communities.

The Historical Response to First Nation Concerns

A series of changes have been introduced by the Province in response to the concerns expressed for many years by First Nations. In particular, responsibility for the administration of the system has been transfered (devolved) to First Nations in Ontario. This step has been positive insofar as it has increased employment on reserve and provides some small degree of community control over the discretionary elements contained within program regulations. However, in spite of such changes, First Nation dependency rates have not declined and the community issues and personal troubles associated with dependency continue. Based on this experience, First Nations express little expectation that the further system reforms currently being contemplated will make the required difference. **It is now generally agreed that no single system can meet all situations experienced by individuals in Canadian society - least of all a situation involving the extreme economic disparities experienced by many First Nations.**

The Significance of First Nation Control - the Issue of Jurisdiction

This points to an additional, basic factor underlying the continuing historical inadequacies of the social assistance system as applied to First Nations - the fact that First Nations have not, for a very long time, been allowed to exercise their self-governing power and capacity to design and implement their own approaches to such issues as income distribution and assistance. For many years, even after European influences began to affect them, First Nations remained economically viable and self-governing; they continued to exercise their inherent power to evolve effective internal solutions to various community issues as they arose - including solutions to issues associated with the support of their members. Given that an externally designed and imposed system has not worked and, in fact, has had the opposite effect of further undermining First Nation institutions, **it is concluded that meaningful reform must involve a return to First Nations of the power necessary to develop and implement solutions consistent with their material circumstances and cultures.**

The long-standing position of First Nations respecting social assistance legislation reform is clearly captured in a resolution adopted recently by an All Ontario Chiefs' Conference:

1. Social Services must be **First Nation controlled** - provided under the authority and sanction of First Nation government and fully accountable to First Nation members.

2. Social Services must be **First Nation determined** - designed and developed within the community by the membership.

3. Social Services must be **First Nation specific** - designed to address community needs in harmony with local culture and social structure.

4. Social Services must be **First Nation based** - managed and delivered within the community.

Given the inconsistencies between the cultural underpinnings of the provincial social assistance system and the basic values and premises integral to First Nation cultures, as well as the continued failure of that system in practical terms, the very basic issues of concern to First Nations reduce to that of jurisdiction - the power to design, implement, manage and deliver a system entirely under sanction of First Nation governments. This has been recognized, in general terms, by the provincial government through its recent acknowledgement of the inherent right of First Nations to be self-governing and of the necessity of establishing government-to-government relationships as expressed in the *Statement of Political Relationship* between the Government of Ontario and the Ontario Chiefs. **What First Nations therefore seek in the current reform of social assistance legislation is a practical incorporation and implementation of this recognition.**

Legislative Approaches

The First Nations' Project Team reviewed a number of legislative approaches through which this basic concern might be met:

- continued application of general provincial legislation, but with specific changes reflecting First Nation concerns;
- the introduction of separate First Nation specific, provincial social assistance legislation;
- the introduction of changes to the Indian Act permitting First Nations to introduce social services by-laws;
- the introduction of federal First Nation social services legislation.
- the implementation of social assistance legislation within First Nations

Each of these approaches was rejected: the first because the required changes go beyond what can be accommodated within system reform; the second and fifth because of the current constitutional division of powers; the third and fourth because the federal government has consistently refused to entertain these possibilities.

The Project Team has therefore concluded that given current constitutional arrangements only one approach holds the required promise in the context of provincial legislative reform: **the inclusion in new legislation of a First Nations-specific, enabling section containing a recognition clause.**

This approach would open three options to First Nations:

- continued operation, if desirable, under the general provisions of the reformed legislation applicable in the province;
- operation under a negotiated, modified version of the general provisions; or,
- operation under a system entirely designed and sanctioned by the community.

The inclusion of an enabling section would permit each First Nation to move, over time, from current conformity with a problematic provincial system to a system of their own design - fully consistent with their values, cultural premises and practical circumstances - as they decide they are ready to introduce changes and assume full control. First Nations can be expected to develop approaches to assistance which range from close approximation to the provincial system, to systems which largely redirect funds into the support of individual development and which use funds in the support of activities, both traditional and contemporary, of significance to the community as a whole.

Other Reforms Required

Given that some First Nations will choose to continue under the general provisions of reformed legislation for at least a period of time, the Project Team has also addressed First Nation concerns with specific elements internal to the current system - many of which were discussed in detail in the first report of the Task Group. It is anticipated that some of the concerns that First Nations have with these elements can be remedied, at least partially, in the general reforms. In particular:

Principles

A preamble should be added which, like the *Child and Family Services Act,* contains a clear statement of general purposes and principles and includes reference to First Nation interests and principles.

Definitions

The definitions section must treat such terms as First Nation, First Nation member and First Nation welfare (or social services) administrator in a manner distinct from terminology appropriate to municipalities - and must make every effort to ensure that such terms as assistance, benefits, benefit unit, allowance, liquid assets, administrator, unemployed person, person in need, etc. apply to the unique circumstances of reserves.

Powers and Authorities

In the section defining powers and authorities, First Nations must be clearly distinguished from municipalities with reference to their status in relation to the federal crown, their status under the various treaties and their character as self-governing Nations as affirmed in the Statement of Political Relationship.

Benefit Structure

The design of the benefit structure must address First Nation questions concerning the treatment of non-members on reserve; the role of the existing 12-month residency rule; the treatment of the self-employed, the working poor, children not attending school, and 18-20 year olds living at home; the definition of disability; the definitions of income and assets in relation to cultural objects and compensation agreements and the treatment of tax exemptions. In respect to allowances, new legislation must respect variations in the basic costs of living on-reserve, correct the problem of differential payment for foster care, respect the need of the low-income employed and self-employed for special assistance, correct problems related to the use of special assistance for repairs of communally-owned housing, respect the need to treat telephone, house insurance and children's recreation costs as items of basic need, permit flexibility in respect to the use of in-kind benefits on-reserve and accept the cost of funerals/burials as a matter of basic need.

Delivery

Provisions respecting the delivery of social assistance must clarify the complex field mission of administrators as First Nation employees, as persons with (typically broad) responsibilities to individual First Nation clients and as persons with a responsibility to the provincial system; broaden the sphere of overall discretion accorded by the delegation of provincial program administrative responsibilities; resolve issues respecting home visits, method of payment, and the treatment of overpayments and recoveries; and permit joint arrangements with other First Nations.

Rights and Appeals

The rights and appeals section must clarify definitions of the rights of clients, of the conditions under which client information may be exchanged with other agencies, of the criteria for refusal/cancellation of assistance, of fraud and of procedures to be followed in response to suspected fraud; and clearly define the powers of First Nation community appeal processes.

Funding

Every effort must be made to ensure that the 1965 Agreement remains in force until such time as tripartite agreement is reached respecting its replacement; and to acknowledge the typically broader responsibilities that are and will be assumed by First Nation social service administrators (as welfare administrators, opportunity planners, para-legals, social service co-ordinators) as compared to their municipal counterparts, as well as their broader and on-going training requirements.

Resolving the Remaining Inadequacies

As noted, there is little expectation that the changes that will be introduced to general provincial social assistance legislation will fully satisfy all the various interests and concerns across the Province; least of all those of First Nations given the cultural inconsistencies and extreme economic circumstances involved. Assuming little change in the current constitutional framework of practical significance in the short to medium term, the proposed First Nations' enabling section and recognition clause provide the necessary means through which remaining inadequacies can be resolved in the best interests of all parties.

It is the view of the Project Team, based on legal advice obtained to date, that it should be possible for the Province, in consultation with First Nations, to develop and to incorporate an acceptable enabling section and recognition clause in a manner that escapes legal challenge and that, with particular assurances, will require minimal amendment of the schedules of the 1965 federal/provincial cost-sharing arrangement.

Province of Ontario

Social Assistance Legislation Review

First Nations' Project Team Report

Introduction

In response to increasing criticism of the social assistance system, the government of Ontario established the Social Assistance Review Committee (SARC) in 1986. This committee carried out a broad process of consultation which sought input from First Nations and First Nation organizations and involved a parallel, First Nation consultation process. Among the many recommendations contained in its 1988 report, *Transitions*, was a call for new social assistance legislation and for further consultation with First Nations in the development of this legislation.

In January, 1989, a Legislation Development Section was formed within the Income Maintenance Branch of the Ministry of Community and Social Services and given the responsibility of reviewing existing legislation and identifying issues. As a result of this work a number of immediate changes were made in advance of legislative reform. Then, after consultation with various interest groups (including First Nations in October,1989), an outside Advisory Group on new social assistance legislation was formed in May 1990 - as well as six Project Teams - each charged with responsibility for generating legislative options in relation to specific identified issues:

- Legal Issues
- Benefit Structure
- Disability Determination
- Employment Services
- Delivery and Funding
- First Nations Communities

The First Nations' Project Team was given responsibility for reviewing and making recommendations with respect to the full range of issues of concern to First Nations.

The work of these Project Teams and the Advisory Group was re-directed for a period starting in November, 1990 to a consideration of further changes that could be introduced immediately without legislative change. A report containing 88 recommendations, *Back On Track* was prepared by the Advisory Group and released in March, 1990. This report was accompanied by a separate report from the First Nations Project Team entitled *Short-term Social Assistance Reforms for First Nations Communities*. With this work accomplished, the Advisory Group and

the various Project Teams returned to their primary objective - the development of legislative options.

It must be emphasized at the outset of this second report that the task of the First Nations' Project Team has been of a considerably different nature than the tasks undertaken by the other teams. While the First Nations' Project Team has had to concern itself with the various elements of the existing system - those that are being considered in fine technical detail by the other teams - **its primary objective has been to analizse historical and contemporary First Nation concerns about the provincial social assistance system as a whole, and to develop legislative options that promise to resolve these concerns and/or provide First Nations with the flexibility they require to resolve these concerns themselves.**

To put it another way, while the other teams have been concerned to develop recommendations for changes that will improve an evolving system which will remain rooted in the Euro-Canadian cultural tradition, **the First Nations' Team has been concerned to develop recommendations that, if accepted, will recognize the very different and unique cultural and socio-structural conditions and traditions of First Nations - conditions and traditions that demand very different approaches to the resolution of the common social issues of income redistribution and community member support than those reflected in the provincial social assistance system.**

The recent recognition by the Government of Ontario of the inherent right of First Nation self-government and of the need, on a government to government basis, to find ways of advancing this recognition in concrete mutually acceptable ways has given the Project Team every reason to believe that the recommendations presented in this report will be given serious study and will be incorporated into new legislation.

Structure of the Report

This Report begins with a fairly lengthy background section which was considered necessary in order to clearly place the major issues of concern to First Nations - especially that of jurisdiction - in proper historical context. This section concludes with a statement of the basic principles underlying the First Nations' approach to legislative reform in the area of social services. These principles, adopted by resolution of the All Ontario Chiefs' Conference, form the basis for much of the subsequent discussion.

In the second section, the primary and central issue of jurisdiction is discussed - immediately followed by a consideration of legislative approaches and the Project Team's recommendation. **The Project Team believes that acceptance of this recommendation will provide the required foundation, short of constitutional recognition of the inherent right of self-government, upon which First Nations, with provincial support, can develop and implement effective systems of social assistance.**

Having dealt with the question of jurisdiction, the third section discusses the major elements within the existing system that are considered most problematic and unacceptable, and outlines the minimum reforms required for continued First Nation operation under the provincial system in the short and medium terms.

The report concludes with an overview of four examples of general program and funding directions which First Nations might pursue, assuming Project Team recommendations are incorporated into new legislation. Some practical examples of these directions that have been designed or are already in place are briefly sketched in the appendices.

Background

Introduction

The historical background to the recommendations contained in this report does not begin with the recent general recognition of inadequacies in the current social assistance system and the work of the Social Assistance Review Committee. Rather, it begins with that period before and for a considerable time after the arrival of Europeans - that period when First Nations were economically and politically self-sufficient communities.

People tend to forget, or to consider irrelevant, the fact that Indian Nations had developed diverse, successful economies based on hunting, trapping, fishing, gathering, farming, craft production and extensive inter-nation commerce throughout North America prior to the arrival of Europeans.

To say that First Nations had well-developed economies and were self-sufficient is, of course, not to suggest that there were no individual and social problems. Like any community, First Nations faced periods of economic insufficiency as well as periods of abundance. They therefore had to deal with the age-old issue of distribution - the issue of ensuring support for the membership in times of need.

However, it is also fundamentally important to appreciate the fact that these economically self-sufficient First Nations were also self-governing. The significance of this point is simply that as self-governing Nations, they had the capacity to develop their own solutions to such issues as income distribution and social assistance (insofar as one can use such contemporary terms in reference to the past). The solutions they developed were rooted in and fully consistent with the culture and social structure of each nation and were effective. Typically, these solutions consisted of a complex web of reciprocal obligations rooted in the family and clan structure - whatever the size of the product of the hunt, garden or trade, it was distributed fairly and equitably according to a set of rights and obligations that were clearly understood and enforced. This system may not have been written down or formalized in the form of law, regulation and directive and it may not have been enforced by a formal system of boards or courts. But it existed, it evolved as circumstances changed, and it operated effectively.

Through the impact of European culture, the gradual depletion of traditional resources and the institution of the reserve system, the historical economic self-sufficiency of First Nations came to an end. As a result, community and individual economic dependence on the external society - on a

scale that had seldom, if ever, been seen before in First Nation societies - gradually became the norm for most First Nations - along with the negative social and personal consequences typically related to poverty and dependence.

However, the fact that First Nations have undergone increasing economic dependence is only one dimension of the historical change they have experienced. Over the same period, their systems of government - their historically effective, collective capacities to resolve issues - were either ignored or were actively undermined. First Nations were relegated to the status of wards of the federal crown - the dependence experienced by First Nations has been both economic and political.

In consequence, the problems that came with the loss of economic self-sufficiency - both dependency and its multitude of related social and personal ills - were no longer dealt with according to community experience, deliberation and decision, but according to federal (and provincial) government views and decisions. On the one hand, traditional, culturally appropriate and historically effective means of dealing with practical community and individual needs ceased to evolve in response to changing circumstances. On the other hand, community-based approaches were overlooked or ignored in favour of the gradual imposition of what were culturally foreign solutions - provincial social assistance systems, child welfare and other social services, education, job-creation schemes, etc.

The fact that such solutions were culturally foreign - rooted in a social structure, value system and set of principles that were inconsistent with First Nation cultures and ignored community views and processes - was not considered (or was not considered relevant) by the federal and provincial governments of the day. Furthermore, the fact that these solutions might, as a result, have negative rather than positive effects in their application was not considered. This can be explained, in part, by reference to the ethnocentrism of policy makers; and, in part, by the now well-documented federal policy of acculturation and assimilation under which First Nations were subjected to the specific dictates and limitations of the Indian Act and the day-to-day decisions of a local Indian Agent.

These facts have been, nonetheless, quite clear to First Nations from the beginning of what has become a long downward spiral into a persistent, vicious cycle of dependence. However, whether it was criticism of the meagre handouts provided by the Indian agents when the hunt failed and jobs could not be found, criticism of the residential school system, criticism of the impact of the child welfare system or objection to the manner in which social assistance systems undermined the lives of individuals and of their communities and thereby perpetuated dependency, the significance of First Nation concerns was either misinterpreted or largely ignored, at least until the 1970's.

A brief review of central aspects of the Euro-Canadian categorical approach to social assistance that was imposed on First Nation communities will help to clarify both the cultural and practical basis of First Nation historical concerns and criticisms in this particular area.

The Cultural Premises of the Euro-Canadian Categorical Social Assistance System

Categorical social assistance programs are distinctly European in origin. The Canadian models derive mainly from England. These grew out of the decline of the feudal, agricultural system, the rise of urban, industrial society and, in particular, the English Poor Law and the influence of church and charity movements. Their modern origins are entirely connected to the process and consequences of industrialization, urbanization and the emergence of the requirement that individuals seek their livelihood on a free labour market. There is a strong economic and cultural relationship between the individualism presumed by the categorical model, the idea of wage labour and attitudes to those needing social assistance. The categorical approach to helping therefore rests upon several key assumptions integral to Euro-Canadian culture; for example:

1. **The Cultural Centrality of Individualism and the Idea of Individual Self-reliance**
   A key component of Euro-Canadian culture is individualism. This is reflected in the assumption that each adult individual - who is either single or who has a family - is ultimately and alone responsible for their economic situation and for the situation of their dependent family - in competition with their fellows. Society thus expects each individual to be self-reliant and financially independent through employment or self-employment.

2. **A Culturally Limited Idea of the Family and Society**
   Although somewhat ambivalent on this point, Euro-Canadian culture defines family as largely secondary to the individual and in very narrow terms. Typically, a head of the household - a specific individual - is considered responsible for the other members. Family (or household) under this system is assumed to be the nuclear, non-extended family made up of the mother, father and children (although today it is often the case that there is only one parent present in the home, usually the mother); that is, the household typical of urban, industrial society. Furthermore, society is viewed as little more than a collection of competitive individuals.

3. **The Labour Market**
   Underlying the way in which the categorical social assistance model is designed and administered, is the additional, culturally-based assumption that individual well-being depends upon the individual's rational exchange of their labour for wages on a competitive, free labour market.

First Nation Cultural Premises

In contrast, the cultures of First Nations typically contain very different assumptions that, despite the history of assimilatory policies, remain relatively strong in most communities. For example:

1. **The Individual**
   First Nation cultures typically carry a fundamental respect for the individual. However, this respect does not translate into the individualism of Euro-Canadian culture. Rather, respect for the individual is only properly understood in relation to the equal cultural

importance accorded to community or the collective. Individuals exist through the collectivity, and their unique value as individuals is expressed first and foremost through their contribution to the well-being of the collectivity - not through their success as self-reliant, competitive and isolated persons.

2. **Community**
   Within First Nation cultures, the collective is understood as more than a simple collection of individuals - as having an historical, continuing existence beyond time-limited individuals. The community - essentially interconnected, extended families and the cultural traditions passed on by these families - is the source through which individuals have meaningful existence both materially and spiritually. While the life of the community depends upon a continuing and reciprocal sharing and caring relationship between individuals, individuals are viewed as fundamentally dependent on the collective.

3. **Labour**
   Historically, the idea of a labour market in which self-reliant individuals competitively sell their labour in return for wages, was largely if not completely absent. Rather, individuals were expected to use their particular talents to contribute, through clear rules of distribution, to the well-being of their extended family and the larger community. Although First Nations may now participate to a greater or lesser extent in the general labour market, the traditional relationship between individual work and community responsibility has not been completely replaced by the idea that the product of work belongs solely to self-sufficient individuals and their immediately dependent spouse and/or children.

Contrasting Views of Assistance or Helping

The very existence of the categorical social assistance system recognizes that the Euro-Canadian ideal can not always be met; that some individuals, some of the time, will require assistance. However, the system, as one would expect, reflects Euro-Canadian, not First Nation cultural assumptions and values.

Centrally, the system reflects a general attitude involving a negative judgement of dependent people which originated in England and Europe: individuals who need social assistance (assistance from the collective) are not really whole individuals - they have some sort of problem or they lack the necessary qualities to be successful and to look after themselves in life. While it would not be humane for society - the collectivity - to have them and their children suffer extreme hardship, their failure to be economically self-supporting is considered a social burden and should not result in great generosity from society (as represented by the government). In respect to family under this system, if assistance is required, it is provided to an identified individual "head" and the amount provided varies according to the number of those (in the nuclear unit) who are dependent on this individual.

This attitude contrasts sharply with the typical First Nation cultural understanding that the individual is unalterably dependent upon - at least interdependent with - the collective. At minimum, this attitude carries the notion that the community and within it, the extended family, is responsible for the development and well-being of each individual - dealing with hard times is always a collective as well as an individual issue.

The rules of the categorical system require most persons on assistance to independently look for work, not to refuse work, and not to refuse other income (eg. cashing in assets built up while gainfully employed) which will help them to remain independent or to be less dependent on others (the society or collectivity) for help. The rules expect individuals to prove that they are in need and to show that they have exhausted all other ways to meet their needs before they come to the government for help. Thus, public support is considered a last resort, government reluctantly provides social assistance, the amount provided is minimal and the expectation is that the need for assistance will be temporary. The reasons for a person being in need of social assistance have already been determined because they are present in the rules and the policy. Even though individuals may be on assistance through social and economic circumstances beyond their control they must accept a form of blame to their situation - they must accept every employment opportunity and follow every rule to remain eligible for social assistance; and they must demonstrate continuing efforts to become independent of that assistance.

In contrast, within First Nation cultures, a very different concept of helping is typical. Traditionally, assistance from others was expected in times of individual need and was provided according to understood rules or norms of reciprocity - typically from specific others within the extended family and not from a central government or agency. Help was provided when required in a non-judgemental manner as a social duty or obligation, not reluctantly - for the well-being of the collective was understood to depend on the continued well-being of its individual members. This central concept remains strong in most First Nation communities despite the fact it has been undermined by imposition of the categorical system for several generations.

Practical Inadequacies of the Categorical System in First Nation Circumstances

The categorical social assistance system is problematic for First Nations not only because it is culturally inconsistent, but also because it does not recognize or respond adequately to the contemporary material and geographic circumstances of First Nations.

First, for example, assuming the labour market is relatively healthy (i.e. that there are plenty of jobs) then, according to the Euro-Canadian view, few people should require assistance and the length of time any employable person requires assistance should be relatively short. Adherence by persons to the culturally central value of individualistic self-reliance, along with a healthy labour market (reinforced by social assistance benefits kept well below the average wage, and by rules of eligibility which require individuals to look for and accept available work), are supposed to ensure individuals are properly motivated to remain or become independent of social assistance and dependent on wages.

In contrast, very few First Nations experience or are located within a healthy labour market. In pre-recession 1989/90, the approximate average social assistance dependency rate (GWA and FBA) within First Nations in Ontario was 32%. Only 6% of the First Nations (representing 6% of the total on-reserve population) experienced rates below 10%. A further 27% of the First Nations (representing 41% of the total population) experienced rates between 10 and 20%. **Fully 50% of First Nations (representing 41% of the population) experienced dependency rates between 20 and 50%**, while the remaining 17% (13% of

total population) experienced dependency rates in excess of 50% - a few above 90%. Typically, First Nations experiencing the lower dependency rates are located in areas that have fairly ready access to the wage economy - there appears to be a rough correlation between dependency rate and increasing remoteness from such areas. Clearly, a system designed to assist individuals, as a last resort, to make it through short term weakness in the wage economy is not and has not been an adequate response to the needs of communities that are essentially outside or on the periphery of this economy.

Second, the specific amount of social assistance provided under the categorical system varies according to several factors including, sensibly, family size. However, the most important factor which affects how much social assistance a person gets is employability. Singles, couples and families considered to be employable are usually treated differently from those considered unemployable. Employable recipients nearly always receive less assistance than unemployable recipients of the same family size. Underlying this different treatment is the belief that employable persons do not really deserve as much assistance from the community as do unemployable persons. Employable persons should be out working and earning their own living. It is thought that to provide them as much social assistance as that received by unemployable persons will encourage laziness and an unwillingness to get off welfare. Unemployable persons are thought to be less fortunate: through no fault of their own they are unable to work and so they deserve a more generous (though still below the poverty line) helping hand from society.

In addition, the definition of employability very rarely has anything to do with an individual's employment readiness, certainly has nothing to do employment availability - the health of the free market for labour - and does not adequately respect the nature of the local work (often traditional) that may be available. For many First Nations, members simply do not receive the training necessary to be employable. But the basic issue is, most often, as noted above, that the labour market is unhealthy or virtually non-existent. Individuals who are employable by external definition receive less than those deemed unemployable when in fact the categories are irrelevant in the circumstances experienced by most First Nations.

Fourth, under the categorical system, when persons do apply for social assistance, they must prove that they are in need. However, while the existence of need has to be demonstrated, the magnitude of that need and the amount of assistance that will be provided is defined, on a universal basis, by government - and may or may not meet the actual requirements of a particular situation. Typically, a very limited amount will be provided to cover basic needs (food, clothing and normal, daily living requirements) - plus a separate amount to cover shelter costs. Any needs not covered by basic support and shelter allowances may be covered - but only on a discretionary, one time, limited grant basis, only if certain, often arbitrary, conditions are met and only if budgets permit.

As noted, most First Nations are located in rural, if not isolated areas. In consequence, the basic necessities tend to cost more primarily because of the travel costs involved in obtaining goods (from food and clothing through building supplies and fuel). The general provincial definition of adequacy therefore has little relevance to most First Nations. Furthermore, the general definition of basic needs does not always cover items that are, nonetheless, basic in such communities - or omits basic items in terms of the application of conditions that are not applicable in the community.

Fifth, categorical social assistance programs are highly centralized in respect to authority and decision-making. Provincial governments make the rules to qualify for and the conditions to continue to receive social assistance. This centralized power is reflected in the nature of the worker-client relationship, often called a professional helping relationship. In this relationship, the worker - who is given only the power to administer existing rules and conditions - is there to help the person to become free of her or his dependence on social assistance which is considered unhealthy and undesirable. However, the worker is also there to apply and monitor adherence to the rules and conditions of receiving social assistance. The individual recipient has almost no power in this kind of relationship - they can appeal certain decisions, but not the rules governing those decisions.

Most First Nations have been delegated administrative responsibility for delivery of the provincial social assistance system. However, like the workers they hire to administer the program, they remain subject to externally developed rules with very little power (discretion) to modify the categorical system to suit the real needs of their communities - and none to develop a culturally appropriate system of support.

The Historical Response to First Nation Concerns

From federal and provincial, culturally-based perspectives, improvements have been introduced gradually in response to First Nation concerns and to public pressure concerning persistently poor living conditions on reserves - housing and infrastructure programs were initiated, the residential school system was ended and on-reserve schools established, provincial social assistance systems and other social services replaced the minimal welfare payments provided by Indian agents, health care was expanded and so forth.

However, these service improvements did nothing to respond to the basic inconsistencies and contradiction between the Euro-Canadian cultural underpinnings of these programs and the cultures of First Nations that was so apparent to the critics. The fact that the dependency figures noted above have remained relatively stable and unacceptably high over the past twenty-five years demonstrates that, at least in the sphere of social assistance, the imposition of external solutions is inadequate. The magnitude of the dependency rate figures is a good indicator of the fact that such solutions have only enhanced the ward status of First Nations and their membership, and have thereby further weakened the self-governing capacity of First Nations to deal with their problems internally and in evolving, culturally appropriate ways.

The beginnings of a change in the situation with respect to social services can be traced at least as far back as the galvanizing effect of the federal *Statement of the Government of Canada on Indian Policy* - the white paper of 1969. By the early 70's, resolution after resolution stressed the need not only for improved services and for culturally appropriate and sensitive services; but, most significantly, for the transfer of full control over services to First Nation governments. As early as 1976, First Nations in Ontario were formally calling for the establishment of Indian-controlled Children's Aid Societies and for Indian-designed social assistance schemes.

Even before the white paper, the beginnings of what is now called devolution - the transfer of administrative control over social and other services to First Nations in response to expressed concerns - was in evidence. However, although First Nations gradually assumed responsibility for the delivery of the provincial social assistance system (from no Bands in the

mid-60's to 105 today), day care and homemakers programs throughout the late 60's, the 70's and 80's, most viewed this as but an interim step - devolved programs remained foreign to the cultures of First Nations in terms of the legislation, regulations and guidelines that still had to be applied. Devolved, administrative control of the social assistance program did nothing to reduce the dependency rate in most communities - and did nothing to reduce the personal and social consequences of the historical loss of economic and political independence.

By the late 70's, the various specific demands of First Nations in Ontario were combined in a call for a full-scale review of provincial social services - with the goal, from a First Nations' point of view, of establishing an Indian-designed and controlled system. A tripartite review was eventually initiated. Its first report, based on extensive research and consultation, *A Starving Man Doesn't Argue*, provided a detailed, thoroughly documented critique of the inadequacies of the delivery of culturally inappropriate provincial services on reserve (whether externally or internally administered) and of the negative consequences of these services in terms of the fact they perpetuated the very dependencies they were intended to resolve. The Review Committee's second report, *Community Care - Toward Indian Control of Social Services*, went on to provide a step by step strategy through which the problems identified in the earlier report could be resolved - a strategy that was to culminate in recognition of First Nation social services jurisdiction.

Although *Community Care* did not become the blueprint for the evolution of First Nation control of social services it was intended to be, it has nonetheless served as an important reference document for other studies, committees and actions that have subsequently been undertaken. For example, the review of Child Welfare and other children's services legislation in the early 80's involved, for the first time, extensive consultation with First Nations. It led to the development of a new Act which made possible the creation of First Nation Child and Family Service Agencies and has helped to ensure that First Nation cultures and traditions are taken into account in the decision-making process concerning the best interests of Indian children. Significantly, the new legislation recognized the importance - the value - of the collective within Indian cultures. Provisions were included which allow for the representation of community interest in a member child - First Nations, through a community representative, have full party status in family court proceedings involving their children.

Despite the change in attitude toward First Nation control (and, to some extent, culture) reflected in the revisions to child welfare legislation and practice, the change nonetheless reduces to little more than enhanced devolution. As transfer payment agencies with their own boards, First Nation Agencies have gained greater discretion in service provision than that experienced by First Nations with respect to welfare administration, day care operation or the provision of homemakers services. However, they still have to comply with child welfare regulations and work with an external family court system, both of which have been designed on the basis of another culture - on the basis of values, principles and notions of helping that are inconsistent with those of First Nations.

The more recent report of the Social Assistance Review Committee, *Transitions*, also refers back to *Community Care*. Significantly, this Committee, based on consultation with First Nations, recommended the initiation of a process that promises to lead beyond devolution - beyond even the enhanced devolution available in child welfare services - to the full recognition of First Nation Social Services jurisdiction in the area of social assistance.

And so we arrive at the present moment. It was as a result of the recommendations put forward in *Transitions*, that the provincial government appointed the Advisory Committee on New Social Assistance Legislation and established the various Project Teams to generate legislative options concerning the various issues that were identified in the Report.

First Nation Principles Concerning Social Services Reform

As noted, the First Nations Project Team, unlike the others, has had to concern itself not simply with the various elements that constitute the provincial social assistance system, but with the system itself - in relation to the material needs of First Nations and their members, and in relation to the historical inadequacies of that system as a whole in the context of First Nation culture, social structure and government. In doing so, the Project Team has been guided by certain basic principles - principles that have been closely adhered to by First Nations in Ontario in their long quest for reform and for the establishment of adequate social services in their communities. The most recent expression of these principles was endorsed by All Ontario Chiefs' Conference (AOCC) Resolution 91/34:

1. Social Services must be **First Nation controlled** - provided under the authority and sanction of First Nation government and fully accountable to First Nation members.

2. Social Services must be **First Nation determined** - designed and developed within the community by the membership.

3. Social Services must be **First Nation specific** - designed to address community needs in harmony with local culture and social structure.

4. Social Services must be **First Nation based** - managed and delivered within the community.

Jurisdiction - The Primary Issue

Introduction

In terms of the principles and the background history summarized above, **the fundamental social assistance issue for First Nations has been and remains jurisdiction.**

As noted in the background section, First Nations have long insisted that effective solutions to social assistance issues on reserve will finally be found only within the communities themselves. Clearly, a system designed for an urban, industrial, wage economy has not worked for most reserves; it has operated to enhance and maintain, not reduce individual and community dependency and has had a divisive and weakening effect on the relationship between the membership and internal government of First Nations. This implies that devolved administrative control of provincially defined and regulated services, however modified through the current process of review and reform, is most likely to remain insufficient.

Rather, First Nation social services jurisdiction; the recognized right to make the law, regulations and policy - a jurisdiction ceded in none of the various treaties - must finally be recognized. **The first and essential problem for the First Nations Project Team has therefore been one of determining possible approaches through which the recognition of First Nation jurisdiction can be implemented in the sphere of social assistance - within the current constitutional framework.**

Given that Ontario has now recognized the inherent right of First Nations to self-government, there would appear to be the political will, at least at the provincial level, to make concrete progress on the jurisdictional issue.

Background

The current Canadian Constitution divides the various responsibilities of the Crown solely between the federal government and the various provincial governments. Responsibility for providing social assistance and social services rests with the provinces under the constitution. This simply means that the provinces have legal jurisdiction with respect to social services; that is, the provinces make the laws under which social services are managed, delivered and funded.

The provincial laws governing social assistance and the various social services typically establish roles for municipal governments in respect to the administration and delivery of services and in respect to funding. That is, provincial

governments delegate some of their responsibilities to the municipal level. However, municipalities do not thereby acquire legal jurisdiction.

The current Canadian Constitution does not, at least not yet, formally recognize or accord any law-making responsibility to First Nation governments; rather, it recognizes the federal government as having a trust responsibility for First Nations - responsibilities that are laid out in the Indian Act. The Indian Act does recognize a very limited by-law making capacity of First Nations at the pleasure of the Minister, but this has not been extended to the sphere of social assistance and social services.

To say that the federal government has a constitutional and trust responsibility for Indians and lands reserved for Indians is simply to say that it has the power to make laws respecting First Nations. However, the Indian Act does not extend to social services. Although it could do so, the federal government has chosen not to make laws respecting social services on reserve. Instead, the federal government has deferred to the provincial constitutional authority to make law in this area. Because provincial social services laws are laws of general application, then by virtue of section 88 of the Indian Act, these laws apply on reserve.

In consequence, although provincial governments do not have the constitutional power to create laws specifically for First Nations, First Nations are nonetheless subjected to provincial law, regulations, program definitions and standards in the social services (and other) areas - and thus to the decisions of staff of the provincial Ministry of Community and Social Services; people whose primary experience is with municipal governments and with provincially licensed transfer-payment agencies. At best, First Nations are treated as municipalities under provincial law; that is, they may be delegated certain responsibilities - typically, devolved responsibility for the management, administration and delivery of provincially defined and regulated services.

The Canada/Ontario Memorandum Respecting Welfare Services for Indians - the 1965 Agreement or the Indian Welfare Agreement (IWA) cost-sharing arrangement - reflects an historical compromise between the federal and provincial governments respecting this awkward split in constitutional responsibilities. Under this agreement Ontario acknowledged its legal responsibility for social services and agreed to extend its services to First Nations. Canada acknowledged its responsibility for status Indians (on reserve) by agreeing to provide the municipal share of program costs to First Nations, to pay a basic 50% of the provincial costs of services provided on reserve, and to pay an additional percentage of provincial costs reflecting the higher per capita cost of delivery on-reserve (in total over 95% of total service cost).

It should be noted that First Nations were not consulted and were not signatories to this compromise. It should also be noted that the compromise was in fact quite limited - Canada agreed to cost-share only a limited range of activities under a limited range of programs funded under a limited number of Acts; Ontario has, for the most part, made available on reserves only those programs which are cost-shared under the Agreement. These facts have been a continuing source of irritation and frustration for First Nations in terms of their efforts to access funds for needed programming.

Despite these irritations, the '65 Agreement has played a significant role in the fact that Ontario, historically, has been a leader among provincial governments in the delegation of

social service responsibilities to First Nations as if they were municipalities. This devolution has ensured that services are delivered locally by people of the community, employed by the community. As well, devolution has confered a level of control over the content of programs delivered through the ability afforded to interpret limited, discretionary areas within the law. However, as noted, devolution does not confer a very large degree of control - it does not respect the inherent jurisdiction over social services claimed by most First Nations and therefore does not permit the local development of services that are fully consistent with First Nation cultures, social structures and practical circumstances.

Current Positions of the Parties with Respect to the Issue of Jurisdiction

Canada

As noted above, the federal government has the ability, but has repeatedly declined, to legislate with respect to social services on reserve. The various Ministers of Indian Affairs and Northern Development have repeatedly refused to approve First Nation by-laws in the area of social services (one child welfare by-law did come into force when not formally refused within the requisite period of time), the federal Cabinet has refused to amend the Indian Act to cover social services and has refused to consider the development of additional legislation for the purpose. As a matter of policy only, Canada has accepted a limited responsibility for the cost of delivery of some provincial social services on reserves - as expressed in the Agreement of 1965.

Of course, even if Canada agreed to legislate in this area, the situation in respect to the principle of First Nation control would not change significantly - federal law would simply replace provincial law; First Nation jurisdiction would not, thereby, be recognized. To date, Canada has refused to accept the First Nation inherent right of self-government - by the same token it has refused to accept the possibility of First Nation social services jurisdiction.

Ontario

Ontario has demonstrated an increasing willingness over the past decade to consult with First Nations on changes proposed to legislation or regulations, to incorporate into such changes as they are made some degree of response to First Nation concerns and, on a delivery level, to permit as broad a degree of discretion as remains consistent with the legislation and regulations. The amendments introduced in the child welfare area represented a significant step forward in an evolving recognition of First Nation concerns. The recommendations of SARC reflected an even fuller awareness of the issue of jurisdiction . The recent recognition of the First Nation inherent right to self-government and of the need for government-to-government relationships suggests the will is now present, provincially, to maximize First Nation control - within the limits of the current constitutional framework.

First Nations

The AOCC resolution noted above expresses not only the underlying principles but the goal of First Nations with respect to the issue of jurisdiction - complete and final control over

social services. First Nations have generally acknowledged this goal. Nevertheless, some First Nations will likely want to continue, at least for a time, in the current relationship within an amended provincial system; some will want to continue the current relationship, but with the ability to introduce changes gradually as their own ideas develop; some will want to design and implement community specific programs as soon as possible.

First Nations seek to accommodate these various positions, eventually, under a revised constitution; currently, within revised provincial legislation - legislation that does not detract from the federal constitutional and trust responsibility; nor in any way interfere with progress toward the ultimate goal of requisite constitutional change.

Approaches to Resolution of the Jurisdiction Issue

The First Nations' Project Team has considered a number of possible approaches under which the basic jurisdictional and other concerns might be dealt with:

- maintenance of the status-quo but under "amended" general provincial legislation;
- introduction of separate provincial First Nation-specific social assistance legislation;
- negotiation of a First Nation by-law approach;
- introduction of federal First Nation-specific social assistance legislation;
- First Nations' legislation;
- introduction of amended provincial legislation containing a First Nations' enabling section and recognition clause.

These approaches were the subject of some consultation with individual First Nations on the basis of an *Options Paper* that was circulated for comment. All of these approaches have been rejected by the Team as inadequate save one. The rejected approaches are considered briefly below - followed by a more detailed consideration of the legislative reform recommended by the Team.

General Provincial Legislation - an "amended" Status-Quo Description

This approach (No.1 in the earlier Options Paper) would involve the introduction of a new general provincial Act that would apply equally and without differentiation to all residents of Ontario - but would contain amendments to current legislation that respond to First Nations' concerns with components of the existing system. First Nations would administer this new comprehensive legislation in the same way as a municipality or any other designated agency - they would meet the requirements for delivery spelled out in the new legislation as directed by the Ontario Social Assistance Policy and Regulations as they do at present.

Considerations and Reasons for Rejection

It is certainly anticipated that the inadequacies of specific elements of the existing system in relation to First Nation circumstances (as discussed in the next section of the Report) will be remedied, at least partially, through the legislative reform process. However:

1. New general social assistance legislation, and nothing more, would maintain the current status quo in respect to jurisdiction; that is, First Nations would continue to be treated as municipalities, not self-governing Nations - the Province of Ontario would maintain power and authority under the new legislation and devolve only certain powers to municipalities and other agencies including First Nations.

2. The only question for First Nations under this scenario would be whether or not to be a delivery agent on behalf of the Province. If a First Nation chose to do so, then it would provide services subject to the new Act, its policies and regulations. If it chose not to do so, then services would presumably be provided directly by the province, by an agent of the Province or by the federal government under provincial rules.

Provincial First Nation-specific Social Assistance Legislation

Description

This approach (No.3 in the Options Paper) would involve the enactment of separate, enabling social assistance legislation for all First Nations in the Province of Ontario along with new general provincial legislation.

Considerations and Reasons for Rejection

Under separate legislation, First Nations could develop and administer more culturally appropriate social assistance programs - subject to the overall principles of the General Provincial Legislation. Such legislation could conceivably contain a recognition section whereby First Nations could exercise their inherent right to self-government as recognized by the Province in the Statement of Political Relationship and thereby, design, develop, administer and deliver their own social assistance program free of limitations imposed by the general legislation. First Nations could, presumably, retain the option of continuing to operate under the general legislation of the Province. However:

1. The enactment of First Nation-specific Legislation by the Province would likely be challenged as contravening Section 35 (existing Aboriginal rights) and Section 91(24) (the exclusive federal responsibility for enacting legislation specifically directed to Indians and lands reserved for Indians).

2. The conferring of such potentially broad powers to First Nations unilaterally by the Province would, in the context of financial considerations, likely generate immediate pressure to modify the current federal/provincial funding arrangement.

First Nation By-law Approach

Description

This approach (No.4a in the Options Paper) would involve striking a bilateral agreement between the Federal Government and First Nations concerning the introduction of an amendment to Section 81 of the Indian Act which would enable First Nations in Ontario to develop social assistance by-laws to meet the needs of their communities.

Considerations and Reasons for Rejection

Under this approach, provincial social assistance law would no longer apply on reserve since the area would then be covered by the Indian Act. First Nations could then proceed to develop their own programs - subject to the pleasure of the Minister and to federal parliamentary appropriations. However:

1. The federal government has repeatedly refused to consider amendments to the Indian Act which would expand the First Nation by-law power into the sphere of social services - it is very unlikely it would consider an amendment specific to Ontario.

2. The federal government, which has not yet recognized the First Nation inherent right of self-government, would simply supplant the province as the final authority in respect to social assistance (with the power to disallow proposed by-laws under the current Indian Act) and gain a unilateral say on funding levels.

3. First Nations would most likely lose the ability to opt into the provincial system.

Federal First Nation Social Assistance Legislation

Description

This approach (No.4b in the Options paper) would involve the development and enactment of federal social assistance legislation applicable on-reserves in Ontario - presumably through bilateral negotiations.

Considerations and Reasons for Rejection

Under this approach, First Nations would no longer be subject to provincial legislation. However:

1. The federal government has repeatedly refused to consider the development of separate legislation specific to social services on-reserve - it is very unlikely it would consider such legislation specific to Ontario.

2. The federal government, which has not yet recognized the First Nation inherent right of self-government, would simply supplant the province as the final authority in respect to social assistance legislation applicable on-reserve, and gain a unilateral control over funding levels.

3. First Nations would most likely lose the ability to opt into the provincial system.

First Nation Legislation

Description

Social assistance legislation, passed by First Nation governments (No.5 in the Options paper) would apply to First Nations in the Province of Ontario.

Considerations and Reasons for Rejection

Clearly, this is the ultimate self government goal of most First Nations in the sphere of social services. However:

1. It presumes a prior and necessary constitutional amendment according a full recognition of First Nation self-government that includes First Nation legal responsibility for social services.

2. Working with the Province to implement provincial recognition of First Nation self-government in the sphere of social assistance does not preclude nor jeopardize the continuation of efforts to secure a constitutional amendment with respect to self-government and responsibility for social services.

The Recommended Approach

General Provincial Social Assistance Legislation with a First Nations-specific Section

Description

Under this recommended approach (No.2 in the Options paper), the new, general provincial legislation would apply to all residents of Ontario. **However, the new legislation would contain a First Nations-specific, enabling section containing a "recognition" clause**. The legislation would encompass three options for First Nations:

1. First Nations could choose to administer and deliver social assistance under the new, general provincial legislation as they do currently, or,

2. Under the enabling section, First Nations could develop, administer and deliver a more culturally appropriate social assistance program - subject to the overall principles of the general legislation - by choosing to opt out of particular provisions of the Act and replacing these with provisions more in accord with their particular situation, or,

3. Under the specific recognition clause, First Nations could choose to exercise their inherent right to self-government (as recognized in the Statement of Political Relationship undertaken between the Province of Ontario and the Ontario First Nations' leadership) and, thereby, assume responsibility, individually or collectively, for the design, development, administration and delivery of their own social assistance service.

Reasons for Recommending this Approach

Under this approach - given the current constitutional framework, the refusal of the federal government to enter the social assistance field legislatively on behalf of First Nations and the willingness of the provincial government to entertain creative approaches to the resolution of First Nation issues in areas of provincial jurisdiction:

1. First Nations would secure expanded powers and authorities within the framework negotiated with the Province.

2. In particular, a First Nations-specific Section would provide a clear basis for First Nations to be involved in the planning, development and implementation of the new, general social assistance program.

3. A First Nations-specific Section would explicitly recognize the diversity among First Nations and would provide the flexibility necessary (through an opting-out clause) for individual First Nations' to respond effectively to unique program and service delivery needs in their communities.

4. A First Nation-specific Section would allow for the coordination of a social assistance program among First Nations.

5. A recognition clause would operationalize provincial affirmation of the inherent right of First Nations to self-government in the area of social assistance (and in a manner consistent with the current constitutional context).

6. The 1965 Agreement would most likely be maintained (subject to revisions to the schedules to reflect changes in legislation). It would be difficult for the federal government to refuse cost-sharing under the new combined Act simply because the costs of the full-range of social assistance cases on-reserve are covered in all other provinces.

7. Since the new legislation will be about social assistance primarily and only secondarily about First Nations (parallel to the Child and Family Services Act), it is not as likely that it would be subject to challenge - in respect to the exclusive federal power to legislate specifically for Indians and lands reserved for Indians - as would separate, provincial, First Nation social assistance legislation.

Issues Internal to the Current System

Introduction

First Nations are also concerned with various practical limitations and inadequacies inherent in the existing system, and therefore are interested in the legislative options being developed by the other project teams in respect to problematic components of the current system - benefit structure, delivery and funding, employment services, eligibility, etc. It is likely that many First Nations will want to continue to use the provincial system or some version of that system - if it is reformed sufficiently in relation to their particular concerns. Even those First Nations that will insist upon immediate development of their own system in relation to their distinct social structure and culture will benefit from an understanding of the detailed analyses of various components of the existing system being conducted by the other teams.

First Nation Concerns with the Current System and Fiscal Arrangements

As noted, current legislation and fiscal arrangements are inadequate from First Nation points of view in several respects - all related to the unique historical, cultural and practical circumstances of First Nation communities. To the extent and for that period in which provincial legislation continues to apply on-reserve, a number of issues and sub-issues must be addressed. Many of these issues were addressed in detail in the earlier report of the Team which accompanied the first report of the Advisory Committee, *Back on Track*.

1. **Principles**
   Unlike the *Child and Family Services Act* (CFSA), social assistance legislation is not prefaced by a clear statement of general purposes or principles - to serve as a guide to interpretation - which includes reference to First Nation interests and principles.

2. **General Definitions**
   The definitions section is inadequate in relation to such terms as First Nation, First Nation member, First Nation welfare administrator - as distinct from municipal agents of the province - and in relation to such terms as assistance, benefits, benefit unit, allowance, liquid assets, administrator, unemployed person, person in need, Director, etc. - as these apply to the unique circumstances of reserves.

3. **Powers and Authorities**
   As above, First Nations are not adequately referenced in existing legislation as distinct from municipalities. In fact they are assumed equivalent to municipalities in most respects - no recognition is given to the distinctiveness of First Nations: their status in relation to the federal crown, their status under the various treaties, their character as self-governing Nations as recognized in the Statement of Political Relationship.

   There is no non-derogation clause (to ensure any current agreement with respect to the operation of provincial legislation on-reserve will not negatively effect future constitutional and/or federal legislative developments).

   Unlike the CFSA there is no provision under which First Nations could opt-out of elements of the Act or negotiate its replacement entirely - thereby acquiring an enhanced flexibility not permitted under the policy of devolution.

4. **Benefit Structure**
   In respect to eligibility for assistance, First Nations are concerned with the treatment of non-members living on-reserve, the role of the existing 12-month residency rule, the treatment of the self-employed and working poor, children not attending school, 18-20 year olds living at home and the definition of disability.

   In respect to financial testing, concern is expressed about what is defined as income and how it is counted in determining allowances, about how special distributions (land claim settlements, compensation agreements) made to First Nations are treated, about the treatment of cultural objects, about current retainable asset limits and about the treatment of income tax exemptions.

   In respect to allowances, First Nations are concerned that current legislation does not adequately recognize variations in the basic costs of living on-reserve, that it provides for differential payment for foster care, that it does not adequately recognize the need of the low-income employed and self-employed for special assistance, that it does not contain adequate provision for the use of special assistance for repairs of communally-owned housing, that it does not treat telephone, house insurance and children's' recreation costs as items of basic need, that it is not flexible in respect to the use of in-kind benefits on-reserve and that the cost of funerals/burials is not considered a matter of basic need.

5. **Delivery**
   First Nations are concerned that, even under devolved responsibility, they may currently administer only the GWA portion of social assistance. They are also concerned that the field mission of administrators as First Nation employees, as persons with (typically broad) responsibilities to individual First Nation clients and as persons with a responsibility to the provincial system is not adequately recognized. At the same time, they seek changes that will broaden and clarify the sphere of overall discretion accorded by the delegation of provincial program administrative responsibilities, and will resolve issues respecting home visits, method of payment, and the treatment of overpayments and recoveries.

First Nations are also concerned that they are limited by the current Act, for purposes of delivery, to joint arrangements with counties - and not with municipalities or, more importantly, with other First Nations and First Nation organizations.

Finally, First Nations are concerned that there is little or no flexibility within existing legislation with respect to the method of delivering available funds to provide social assistance - there is, for example, no equivalent to the federal Social Assistance Transfer Funding (SATF) scheme whereby individual entitlements can be used to support and develop employment and employability. By the same token, and insofar as an appropriate social assistance system should be developmental, First Nations are concerned that the funding of client upgrading, skills training and work activity projects, currently funded under other legislation, become part of a new social assistance Act.

6. **Rights and Appeals**
   First Nations seek clarified and consistent definitions of the rights of clients, the conditions under which client information may be exchanged with other agencies, the criteria for refusal/cancellation of assistance, fraud and of procedures to be followed in response to suspected fraud. In addition, First Nations seek clarification within a new or revised Act regarding the establishment and powers of First Nation community appeal processes.

7. **Funding**
   First Nations are concerned that, consistent with the decision of the Ontario Tripartite Council, the 1965 Agreement remain in force until such time as tripartite agreement is reached respecting its replacement. Should a single new or revised Act take the place the GWA and FBA, it is essential that the appropriate schedules be amended to include this Act and thereby, the expanded funding implied in assuming direct administrative responsibility for a larger social assistance caseload.

   First Nations are also concerned that legislative revision acknowledge the typically broader responsibilities that are assumed by First Nation social service administrators (as welfare administrators, opportunity planners, para-legals, social service co-ordinators) as compared to their municipal counterparts, as well as their broader and on-going training requirements; and that these facts be recognized in the determination of staffing levels (the use of caseload ratios) and the provision of administration funding.

General Requirements for Legislative Revision

It is anticipated that many of the First Nation concerns with the current system can and will be at least partially addressed in the development of new, general legislation. However, it is generally accepted that it is impossible to develop legislation that will respond effectively and adequately to the wide diversity of interests and situations that characterize the population of the Province, especially the interests and economic circumstances of First Nations. The following section outlines the significance of the proposed enabling section and recognition clause where there remains a gap between the amended provisions of the general legislation and the requirements of First Nations.

1. **Expression of Principles**
   The new legislation requires a preamble inclusive of First Nations' interests and principles - similar to that contained in the *Child and Family Services Act* - to help ensure consistency in interpretation of the Act, and especially of the enabling section and recognition clause, over time.

2. **General Definitions:**
   Under the general legislation: First Nations would operate as per amended definitions applicable across Ontario.

   Under the enabling section: the definition of some terms could be modified in relation to specific changes to the terms of the general legislation negotiated by First Nations.

   Under the recognition clause: all terms would be defined by First Nations.

3. **Powers and Authorities**
   Under the general legislation: First Nations would operate as agents of the province as if municipalities.

   Under the enabling section: The Province of Ontario would maintain final power and authority. However, First Nations could assume specific powers and authority within a framework negotiated with the Province. First Nations would be designated as authorities for all aspects of social assistance service delivery inclusive of applications, program delivery and reviews.

   Under the recognition clause: First Nations, individually and/or collectively, would be recognized as having final power and authority for their social assistance service.

4. **Benefit Structure**
   Under the general legislation: First Nations would simply utilize the amended benefit structure as laid out in the general legislation and regulations.

   Under the enabling section: Such matters as culturally appropriate definitions of benefit unit, conditions of eligibility, assets, income levels and income exemptions could be negotiated with the Province in an effort to ensure full compatibility with variable First Nations family structures and unique community needs.

   Under the recognition clause: First Nations, individually and/or collectively, would determine their own benefit structure.

5. **Delivery**
   Under the general legislation: First Nations would act as delivery agents of the Province and would provide the general program to their members according to amended provincial regulations and operational guidelines.

Under the enabling section: It would be possible for First Nations to negotiate variations in the general delivery system that would result in a more appropriate system reflecting their unique circumstances. Joint delivery of a social assistance service through First Nation organizations would be made possible under this section.

Under the recognition clause: First Nations, individually and/or collectively, would have the full authority to determine their own social assistance service delivery system.

6. **Rights and Appeals**

Under the general legislation: First Nations would follow the requirements laid down in the amended general legislation and regulations.

Under the enabling section: It would be open to First Nations to negotiate local appeal procedures appropriate to community culture and circumstances.

Under the recognition clause: First Nations, individually and/or collectively, would have the authority to determine their own appeals system and procedures.

7. **Funding**

Under the general legislation: With the introduction of new social assistance legislation, the 1965 Agreement could continue, but with a schedule amendment to reflect the change in legislation. Given the extent of the change (the inclusion of cases not currently cost-shared), this amendment would likely require a process (presumably tripartite) of negotiation. First Nations would likely continue to receive reimbursement of actual expenditures made in conformity with general regulations and guidelines - municipal share from the Department of Indian Affairs and Northern Development; remainder from the Province under the terms of a continuing 1965 Agreement. Funds for additional staffing, training, capital and operational costs would most likely be required. Additional funds would also have to be made available to accommodate the increased job responsibilities of the First Nations welfare administrators and other associated costs. Salary adjustments would be necessary.

Under the enabling section: As above, except that the negotiation of changes to the schedules of the 1965 Agreement would likely involve a federal requirement that federal financial liability, in instances where program changes have been negotiated, will not exceed liability under the application of the amended, general requirements.

Under the recognition clause: As above, except that various funding options could be explored such as Federal/Provincial transfer or equalization payments, and the establishment of a First Nations' revenue base (see Directions below).

8. **Residual Elements**

Civil Legal Aid: Civil legal aid, presently provided under GWA (to both GWA and FBA recipients), would be retained under the new legislation.

Choices: Program and Funding Options

Introduction

The recommended response to First Nation concerns would clearly open the way to the development and implementation of unique First Nation approaches to resolving the need for income distribution and income support - possibly very different from the approach that will be adopted in new, general provincial legislation. In an effort to assist subsequent deliberations about the viability of incorporating this approach into new legislation, the Project Team has considered some of the program and funding options that might be pursued by First Nations.

The four scenarios outlined here range from one in which funds are provided from the outside, through community administration, for direct, externally regulated delivery to the individual and her/his family (that is, in the way that it is done now - but under a revised Act and regulations), to one in which funds are provided to the community as a whole for subsequent distribution in a manner that is fully determined by and consistent with community need and decision.

In the course of the descriptions, these potential choices are considered in relation to the movement towards self-government. It is likely that the more assistance is made available to a community as a whole - for subsequent distribution in community terms - then the closer that community will have moved toward the realization of self-government, at least with respect to social assistance. In contrast, the more assistance is provided for, but as an already regulated distribution to individuals and their families, then the more the process within First Nations will continue to reflect the values and premises of the dominant, urban, industrial society and will remain a continuation of the historical relationship between social assistance, political and economic dependence, acculturation and assimilation.

From a slightly different point of view, the more social assistance is available to the community as a whole (for example, as an equalization transfer payment), then the more it is truly social instead of individual assistance (from the standpoint of external funders), the greater the possibility of reducing the stigma associated with welfare and the more significant is the collective and its internal governing process to the membership. Under this approach, First Nations would be free to begin the process of defining and establishing their own ways of helping each other and of carrying out those activities that make their communities unique and healthy.

Another important point carried in the discussion below is how each way of looking at social assistance connects with the recommended legislative approach. Finally, there is an attempt to show how one might determine the cost of each way of providing social assistance and how each way could be funded - with reference to whether or not the 1965 Agreement would be affected.

The Categorical Social Assistance System Retained

As described in the background section, categorical social assistance programs are rooted in the concept of individual responsibility for the existence of need. It is the responsibility of the individual not only to apply for and prove the existence of need, but also to overcome dependence on social assistance and to accept employment - any employment - which will eliminate or reduce the need. It is assumed that the labour market is the necessary and preferred distributor of income. Most categorical social assistance programs define unemployability in such a way as to ensure that the great majority of recipients are employable or, at most, temporarily unemployable. Assistance, when granted, is directed only at adult singles and couples and to nuclear family units.

Nonetheless, a First Nation might choose this method of providing social assistance, irrespective of the cultural inconsistencies involved. They would therefore provide assistance to their members much as they do now. The only real changes would result from the proposals made by the other project teams who are looking at how to make GWA/FBA better for the non-Native population; presumably including the recommendations made by the First Nations project team and accepted by the Ontario government in the report, *Short-term Social Assistance Reforms for First Nations Communities* (March, 1991).

Relationship With the Recommended Legislative Reform

Categorical Social Assistance as described in this part would best fit under the core, general provincial legislation with whatever reforms the government brings forward from the former GWA and FBA legislation. Thus, most First Nations opting for this model would continue as designated agencies of the province and act as a municipality.

There is however, another possibility. It is conceivable, under the recommended legislative option, that a First Nation might chose this method of providing social assistance; but under the recognition clause of the First Nations' section. That is, the community would deliver a program exactly the same as the provincial program - with the significant difference that it has freely chosen to do so through exercise of its own, provincially-recognized jurisdiction for social assistance. Just as two provinces operate very similar programs, so might the province and a First Nation offer the same, but jurisdictionally separate programs.

This might appeal to some communities. First, it involves provincial recognition of the inherent right of self-government. Second, it allows a community to provide its own program, but from a familiar starting point. Third, because a community would have jurisdiction, it could eventually change the nature of the program by invoking the enabling section of the legislation - at its own pace.

Costing and Funding

Under this model of social assistance, projected budget requirements would continue to be determined through consideration of current and historical expenditure patterns, together with other influential factors such as anticipated economic conditions, changes in family composition, market shelter costs, and so on. Basic assistance and shelter rates would remain the primary reference point for projecting overall costs. How these rates are determined would remain largely an external political decision, with a continuing attempt to ensure chosen rates bear a reasonable relationship to market costs. Irrespective of projected costs, it is presumed that delivery agents (municipalities or First Nations) would be reimbursed for their actual expenditures following provincially determined regulations and rate structure.

Presumably, a First Nation which chose to deliver this model of social assistance under the recognition clause would cost it in the same way since it would still be using the provincial regulations and rate structure.

The 1965 Agreement would likely continue as the major funding mechanism for this model. A simple amendment to the schedules of the Agreement would be required to cover the new or revised Act.

First Nation Modification of the Categorical Social Assistance System

This second scenario is, in principle, the same as the first, but presumes use of the enabling clause to negotiate specific modifications or adaptations of the system by First Nations. The overall skeleton or structure of a specific program would remain categorical - there would likely be a continued emphasis on individual responsibility in the application and determination of eligibility process; a link would continue to exist between need and the preferability of employment in the labour market and need would continue to be measured by assets and income in relationship to family size and employability. However, First Nations would conceivably introduce significant and important adaptations such as those outlined below:

Potential Modifications

1. **The idea of self-reliance**
   Individuals and their dependents would likely continue to be seen as the responsible clients. There is therefore no basic difference here between the first and second way of looking at social assistance. The community would continue to be the provider of last resort. Individuals would remain responsible to find ways to resolve their situation.

2. **The family and the benefit unit**
   The family might, however, be re-defined to fit a particular community's traditional culture and social organization - including kinship and household patterns - and the benefit unit could be re-designed to reflect these culturally defined units. It is also possible that a community could include various family arrangements from ranging from the typical singles, couples and nuclear families to extended family or clan systems.

3. **The labour market and employability**
   While the idea of the labour market and the preferability of an earned wage would likely continue to apply and employability would likely continue to be a factor in determining eligibility and in setting the conditions for continued receipt of assistance under a modified system, expectations about employment could be modified to suit the culture and expectations of the community as well as its geographic location. Furthermore, employability could be re-defined in terms that more accurately reflect a community's meaning of the term - the reality of employment opportunity in or near the community. Issues surrounding seasonal employment, traditional occupations, family and community responsibilities could all be taken into account.

4. **Defining, testing and meeting need**
   While need might continue to be defined in a limited fashion restricted to basic support and shelter requirements, benefit levels could more accurately reflect the actual, local costs of basic support and shelter. Similarly, special need allowances could be provided for items that are unique and necessary to living on reserve - beyond those items currently recognized under standard categorical social assistance programs. As well, the same amount could be provided to all same-sized units regardless of employability.

   While an unaltered test of need would likely remain in place and need would be established using the same categorical method and criteria (appraisal of assets and income in relation to family size), the application process could be tailored to reflect the reality of life in the particular community. Assets and income could both be defined in terms and according to allowable levels which would more accurately address the lifestyles, livelihoods and cost of living in the community. Thus, the determination of need would be community-based and community-specific - i.e. unique to the community.

5. **The worker-client relationship**
   The current character of the worker-client relationship might be modified to some extent to reflect other cultural adaptations within the program itself and to provide for a more comfortable working relationship.

6. **Method of Payment**
   The standard method of providing assistance (a monthly cheque) might be modified according to the individual's situation and occupation within the community. This would be especially important for seasonal and traditional forms of employment. Some persons and families require a monthly income; others need occasional lump sums over a longer period to supplement earnings from seasonal occupations.

Some Observations

Despite the introduction of modifications such as those suggested above, this approach remains a categorical social assistance program. The overlay of individualism in the Euro-Canadian sense together with a focus on personal responsibility to be independent, self-reliant and engaged in the wage labour market would remain. The negative view of dependence on welfare would persist and the worker-client relationship would still be

characterised by the contradiction between enforcing the rules and providing encouragement and direction in assisting the client to become independent.

The difference lies solely in the possibility of First Nation development and negotiation of particular compromises between some of the values and expectations of Canadian society and some of those of First Nations in terms of specific program parameters. In this respect, the approach begins to meet some of the AOCC principles and some of the recommendations contained in *Transitions* and may, therefore, have a certain appeal to many First Nations - it represents a move towards social and cultural relevance; yet, in both its structure and administrative method, it remains familiar in practice.

A program which has some of the characteristics of this approach is in existence in British Columbia at the McLeod Lake Band near Prince George - another has been proposed for the James Bay area (see Appendix No.1 and No.2).

Relationship With the Recommended Legislative Reform

Adaptation of the categorical model of social assistance is made possible by the inclusion of the enabling section in the general legislation. First Nations could, of course, chose to operate with a modified version of the categorical system under the recognition clause. Despite the fact that First Nation programs would diverge from that defined by general regulations, as modified categorical systems, they would continue to conform to the spirit and intent of the general legislation.

Costing and Funding

The projection of anticipated costs under a modified categorical system would most likely be carried out in the same way as for the first model. However, because, under this model, a First Nation could develop its own benefit structure, funding might become an issue. The 1965 Agreement could likely be retained (with requisite schedule amendment) if the federal government received assurance that its liabilities would not exceed liabilities under the general provincial program. However, this would imply the need for a provincial agreement to cover any cost differential resulting from the program modifications negotiated.

A Social Assistance Transfer Approach

This approach can be viewed as transitional. It remains linked to the categorical social assistance model, but differs significantly through a deliberate and planned diversion of social assistance funds into employment and training activities. Opting for this approach depends on two key factors - a planned creation of employment and, usually, the availability of, additional funds.

Under the social assistance transfer model, a First Nation would combine the social assistance entitlement of individuals - as determined under categorical social assistance rules - with other funds to create wages for identified jobs and training allowances. It is also possible that, even where additional funds are unavailable, the social assistance funds could be utilized alone to support employment - including traditional community work - while ensuring that the basic needs of the entire community are met in terms acceptable within the community.

A model for this approach is already available in the federal Social Assistance Transfer Funding Program (SATF) - which currently has no equivalent within the provincial system. However, under current federal program rules, this model limits the transfer of funds only to support for jobs which are project-oriented and time-limited or to jobs which constitute demonstrable opportunities for skills training and work experience leading to real jobs in the wage economy (or to time-limited training projects which will have the same result). As previously noted, for many First Nations there is no labour market present or none large enough to provide these jobs - the federal SATF program is therefore severely limited.

A much more flexible and indefinite use of social assistance funds can be envisaged which would permit a First Nation to create on-going employment on-reserve or to support traditional activities which, for any one community, constitute valuable and necessary work. As well, the use of Social Assistance Transfer could permit supplementation of or provide wages for developing First Nation community industries, businesses, and services.

Basically, under a more flexible SATF model, social assistance entitlements would become a crude funding formula for funneling money into a community in order to create work and to support community services and enterprises. Instead of transferring these funds on an occasional project basis (as is done now), the Council or designated planning body would be able to divert most of the funds into on-going work and enterprises considered important to the community.

These work activities and enterprises could be traditional and intrinsic to community life, or they could be new and intended to become economically self-sufficient. Only those very few persons considered completely unable to contribute to the community would remain in receipt of standard, categorical social assistance. The model would probably function best where there is a mix of projects and on-going enterprises. It would be useful in allowing a community to keep its wages competitive while new enterprises are in formative and early operational stages.

Significant Characteristics of Social Assistance Transfer

1. **Individual entitlement.**
   The Social Assistance Transfer model remains individualized for the purpose of securing funds. Thus, individuals would still take a needs test and would be qualified for a specific amount of assistance according to the benefit levels established under the (modified) categorical approach. Technically, a person must remain otherwise eligible, once working, in order to continue to generate the social assistance funds involved - this is most likely to be the case unless a particular employment project produced a saleable product or service and eventually became self-supporting, generating the full wages required.

2. **Transfer procedure**
   Once the total amount of individual entitlement is determined there are two options:

   - the total amount of social assistance entitlement (of employable persons linked to jobs created or training made available) could be centrally pooled, combined with other funding sources (if available), and redistributed in the form of wages or training

allowances at levels the community would deem appropriate to maintain a reasonable standard of living; or

- each entitlement could remain tied to its specific recipient, combined with another source of funds (if available) and then paid as a wage directly to the recipient.

Those persons unable to work, or for whom additional funds were not available, would receive assistance in the regular manner through the (modified) categorical system.

3. **Working for welfare?**
This approach has been referred to by some critics as making people work for welfare - an approach that is generally rejected and, besides, is disallowed under Canada Assistance Plan cost-sharing rules. However, it is one thing to require individuals to perform work in return for their welfare entitlement; it is quite another to develop a community workplan, post jobs and expect people to apply for these jobs.

Under the categorical system, it is quite legitimate to refuse assistance to those who refuse work when positions they are capable of performing are available. In the particular circumstances of First Nations, the positive flexibility offered by this approach far offsets the possibility of misuse (from an external point of view).

Some Observations

1. A community would gain more control over the use of social assistance funds under this model than under a (modified) categorical system alone - the only federal and/or provincial government stipulation anticipated would be a requirement that the basic needs of all community members continue to be met under the Social Assistance Transfer approach.

2. Social assistance would become invisible, at least to the (now employed) recipients and the individual stigma associated with welfare would disappear. As social assistance funds are combined with other funds and used to support employment as a matter of course rather than exception, then the perception of social assistance within a community would likely change. Those members of the community visibly on direct social assistance would form a small minority and, generally, would be recipients for reasons other than a failure to find an appropriate means to contribute to the community.

3. The diversion of social assistance funds into community activity and enterprise could create a greater sense of community self-sufficiency and interdependence. Together with other funds, social assistance could be used to support socially and culturally appropriate activities. Thus, the use of the funds would be more community-based and First Nations-specific. Except for the method of determining the level of funding (i.e. individual eligibility for social assistance), and the residual responsibility to provide direct assistance for those unable to work or engage in community activity, the program would also be more First Nations determined.

4. For employment plans and projects that require (employment) funds from other sources for their viability, the transfer model faces a definite limitation since there is seldom any First Nation control over the availability of these funds (or over the applicable terms and conditions attached to these funds). The potential of the model is also constrained by the fact that employment creation funds from other agencies (eg. CEIC) are usually time-limited. This problem can sometimes be offset by using revenues produced by First Nation enterprises (eg. a mill, small businesses, tourism, leasing, etc.).

Relationship With the Recommended Legislative Reform.

This model is transitional in that it depends on principles that remain part of the present way of providing assistance, at least in respect to the determination of funding levels. However, a First Nation might first opt to establish a modified categorical system and then further opt to use Social Assistance Transfer. In other words, this approach can be used in conjunction with the first two and is therefore transitional.

Costing and Funding.

Determination of the anticipated annual costs of a Social Assistance Transfer program would follow the same methods as used under a (modified) categorical system and face the same potential concerns (as discussed above).

However, this approach may involve an additional funding issue. Because the level of funding is based on the continuing eligibility of recipients, there is always the possibility of a loss of anticipated revenue if some persons became ineligible. Insofar as a community's employment/training plan and projects depend on specific projected amounts, a potential loss of revenue - through a decrease in numbers eligible - introduces an instability which could reduce the viability of the transfer approach.

This problem may be minimal given the fact that a decrease in the numbers otherwise eligible also means a decrease in the numbers that have to be supported through the transfer process. In addition, it may be possible to reduce uncertainty entirely through negotiation of funding agreements with the province that will guarantee a certain level of funding for a specified period - irregardless of short-term variation in the numbers of those otherwise eligible. Such an agreement, perhaps following the federal Alternative Funding Arrangement concept, could result in the provision of a set amount which would be based on the pattern of historical expenditure, but provide for annual rate increase and for contingencies such as unforeseen rate or caseload increases.

The 1965 Indian Welfare Agreement would likely continue to apply - although in amended form and with a federal condition limiting liability to equivalent cost under the general legislation - since the social assistance funds would be accessed through the application of a categorical social assistance model under general provincial welfare legislation.

A Transfer Grant Approach

Simply put, this approach would involve the establishment of a mutually-agreed basis for an annual government-to-government transfer of funds equivalent to the disparity between a First Nation's overall income need and that community's ability to generate the income required independently. A transfer grant approach would be similar in principle to the established federal/provincial equalization process whereby less wealthy provinces are provided with additional funds by the federal government. The amount transfered would be sufficient to ensure a reasonable standard of living in the community.

Australia utilizes a form of this model entitled the *Community Development Employment Program* (CDEP). However, the CDEP is limited because it remains a cross between the Social Assistance Transfer approach and the principles of a full Transfer Grant approach - the amount transfered is calculated on the basis of total social assistance entitlement (see Appendix No.3).

Some Observations

The grant transferred would be targetted to the community as a whole rather than to individuals deemed eligible through a needs test - leaving it entirely to internal, community decision as to how these funds are utilized to the benefit of the membership.

Clearly, for so long as First Nations require funding from other governments, a transfer grant approach is the direction most consistent with the basic principles adopted by the AOCC.

Relationship With the Recommended Legislative Reform.

The transfer grant model is primarily suitable for the recognition clause under the First Nations' section.

Costing and Funding.

The most difficult aspect of a transfer grant approach is the development and negotiation of a mutually-acceptable formula to determine the amount of the grant. Presumably, the formula would provide for an amount that would supplement all known incomes within a community - to a level that would maintain a standard of living appropriate to that community given its particular demography, social organization, traditional activities and general cost of living. That is, the grant would be equal to a total, calculated amount required to maintain all residents at a reasonable standard of living minus certain monies available to the community from other sources (eg. business and employment incomes, pensions, Unemployment Insurance, distribution monies, trust fund revenues, shared resource revenues, etc.). Any strings attached to the transfer would be minimal and would leave the design of the distribution, support and assistance system entirely up to the First Nation.

It is not clear whether the 1965 Agreement would apply in whole or in part to communities who chose this model. In concept, the transfer grant model is so different from what was intended by the 1965 Agreement that it would seem to render the Agreement inapplicable. However, insofar as the federal government was provided with assurance that its

liabilities under this model would closely approximate liabilities under the general system, no doubt the 1965 Agreement could continue with requisite schedule amendment.

It might be noted that the transfer grant approach could be expanded to cover all social services and, eventually, could become the basis for transfering all required funding between First Nations and other governments.

Strategies for Implementation

It is Recommended:

1. that, **in the short term**, the Ontario Indian Social Services Council (OISSC) and the Ontario Native Welfare Administrators' Association (ONWAA) be mandated to:

   - carry out detailed analysis of the range of legislative options put forward by the other project teams in relation to expressed First Nation concerns in the areas under review. (It is essential that First Nations have at their disposal discussion papers concerning the adequacy of those particular proposals that may be incorporated into draft legislation. *It is important to note that none of the technical papers prepared for the other teams directly or expressly address any of the specific concerns unique to First Nations);*
   - enter into discussion with those officials of the Ministry of Community and Social Services responsible for preparation of draft legislation regarding questions or concerns they may have with the recommendations contained in this report;
   - develop a budget and workplan and be provided with the resources necessary to complete the work as detailed in the workplan.
   - develop a plan and budget for First Nation consultation on draft legislation; and
   - report their findings to the All Ontario Chiefs' Conference (AOCC).

2. that, **in the medium term**, the team comprised of the OISSC and ONWAA be mandated by the Chiefs of Ontario, should the proposed recommendation be accepted, to develop a plan through which to address the details of implementing the recommended legislative option - including, but not limited to - the development of new approaches to funding, tripartite funding negotiation and the establishment of a First Nations technical support group to assist First Nations in the development of program modifications and alternatives.

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Glossary of Terms

First Nation	a political body mandated to represent a First Nation Community.
First Nation Member	an individual who is a member of a First Nation Community.
First Nation Community	a group of First Nation members residing on a federal reserve.
First Nation Welfare Administrator	an individual employed by a First Nation to administer the General Welfare Act.
First Nation Project Team	one of six project teams designed to undertake the required policy analysis of issues in social assistance legislative reform, mandated to analyze issues specific to Ontario First Nations.
General Welfare Agreement(1965)	an agreement between the federal and provincial governments for the reimbursement of social service program costs for Ontario First Nations.
Family Benefits Act	an Ontario provincial act authorizing municipalities to administer social assistance programs, a form of social assistance for which First Nations are not authorized to administer in First Nation Communities.
All Ontario Chiefs Conference	an annual gathering of Ontario First Nations political leadership, a recognized political body in the consultation process for social assistance legislative reform in Ontario First Nation Communities.
Statement of Political Relationship	a 1991 agreement between Ontario First Nations and the Ontario Provincial Government in which both parties recognize First Nations' inherent right of self government as affirmed in the Canadian Constitution Act, 1982.
Section 91(24)	under the Canadian Constitutional Act, federal responsibility to legislate for First Nations.

Section 92 (13)	under the Canadian Constitutional Act, provincial authority over social services.
Canada Assistance Plan Act	a 50/50 federal/provincial cost sharing legislative framework for social services which sets national standards for social welfare services; requires agreement of the Province.
Section 81 (Indian Act)	provides for the By-Law making capacity of First Nations.
Enabling Section	under the recommended approach, provides First Nations with the capacity for developing a culturally appropriate form of social assistance, subject to the principles of general provincial legislation.
Recognition Clause	under the Enabling Section, First Nations may exercise the inherent right to self government to assume responsibility for social assistance services without provincial involvement.
Bilateral Agreement	a process of two party negotiation and agreement.
Tripartite Agreement	a process of three party negotiation and agreement.

Appendices

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Appendix one

The Personal Development Program of the McLeod Lake Indian Band.

The Mcleod Lake Band's Social Assistance program is funded under DIAND's Alternative Funding Arrangements (AFA). Through AFA a First Nation community may develop and implement its own social assistance policy and program but it must meet certain standards defined by the Department. These standards emanate both from the Department's own National Program Standards and from the standards set out in the Canada Assistance Plan. The standards include a defined application and eligibility process, a developed benefit structure, a developed administrative procedure, a provision for hardship, and an appeal process. Within this framework the band developed a policy which attempts to establish a fuller relationship between the community and the individual.

Individuals apply for assistance under the same regulations as the province. If they qualify and are on assistance for more than three consecutive months then they must submit a Personal Development Plan to the Personal and Community Development Committee. The Committee assesses the plan and makes recommendations to Chief and Council. Once approved by the Chief and Council the recipient is assigned a resource worker to assist the person in realizing the plan.

Each plan consists of 6 areas of personal development which the band believes are universal to all societies:

- Education, literacy and cultural development;
- Career development;
- Management of personal resources including money;
- Health and physical development;
- Social and emotional development;
- Home management.

The duration of the plan together with the costs of particular items (eg. courses, etc.) plus living expenses and so on determine the overall cost to the individual recipient. The recipient is expected to secure funds from as many sources as possible before requesting funds from the band. It is especially important for the extended family to help if possible, as well as known government funding agencies.

The band will provide the balance of funds from the social assistance program up to the amount of the recipient's entitlement. The person may receive full or partial entitlement even though s/he receives funds from other sources unless all other sources are able to meet *ALL* the costs of the plan.

The resource worker and the recipient work together to assess the progress of the plan and the P&CD Committee is regularly informed of the status of each recipient's plan.

The emphasis of the McLeod Lake program is on the recipient as interdependent with the community. It is important that the recipient's family and the community take an active role in supporting the person's development so that s/he becomes a contributing member of the community. In some ways, it could be argued that this program is not unlike other opportunity programs offered by most provincial welfare programs. However, the difference probably lies in the nature of the relationship established between the recipient and the community which seeks both to include and to guide her/him. As well, there is an attempt on the part of the band to place an emphasis on the *social* part of social assistance so that welfare is seen as something dynamic not static.

Appendix two

The Omushkegowuk Harvesters' Association Income Security Program Proposal

The members of First Nations located on the Ontario side of James Bay have for many years been able to rely extensively on a continuation of the traditional harvesting economy - along with a mix of wage jobs supplemented by welfare support. The Harvesters' Association estimates that approximately 88% of potential hunters remain involved in the subsistence harvest and that 60% of this group are still able to make a significant contribution to their households and their extended families - in kind (bush foods and raw materials for crafts) and in cash (sale of furs).

Unfortunately, in the past few years, the reduction in the price of furs along with the disincentives of the welfare system are threatening to destroy the harvesting economy. On the one hand, the drop in the price of furs has cut incomes by 70% over the past two or three years. While this does not directly eliminate the role that traditional harvesting can play in offsetting the high costs of imported foods and fuels, it does affect the availability of funds required to adequately equip and undertake the harvest in a sustainable manner. On the other hand, the social assistance system, as currently structured, does not support a continuation of harvesting activity. The monthly payment system works against spending extended periods in the bush forcing many to become part-timers in the harvest economy. The same factor encourages harvesting in close proximity to the reserves - thereby causing harvest crowding in areas near the villages. Finally, the availability of welfare payments in their current form acts as a disincentive to earning income from the products of the harvest.

In consequence, many life-time trappers are being displaced - and in the absence of jobs in the wage economy they are being forced into an existence of dependency on social assistance. Most important, the dis-empowerment of individuals that is involved in the gradual destruction of the bush economy is, in fact, undermining the entire way of life and culture of whole villages. This trend, in turn, has resulted in an increasing level of social problems and, in response, a requirement for increasing social service expenditures.

In response to this situation, the Omushkegowuk Harvesters' Association has proposed a detailed modification of the social assistance system that they believe will reverse the current, negative relationship between the welfare program and traditional harvesting activities; permit the survival of the traditional, land-based way of life and culture in the James Bay region; and, thereby, actually reduce the costs of the social services system as a whole.

Essentially, they propose using social assistance funds to provide supplementary income to families and individuals engaged in full-time harvesting (a minimum of 120 days per year) in a manner that encourages such activity and rewards related resource management. These funds would be

provided, in part, as a grant which would enable the capitalization of the harvesting process (supply purchase, transportation, equipment, etc.). The remainder of the supplement would then be paid out on a seasonal rather than a monthly basis in recognition of the long periods spent in the bush. The size of the annual supplement would be varied according to number of dependents and annual inflation, and would be varied according to a family's net income (after deduction of defined levels of retainable income). The new program would, as well, be integrated with other programs involving such things as product marketing, resource management, transportation support and bush schooling for the children of the harvesters.

They propose a management system involving a representative Board, a Director and administrators located in each village. In addition they propose the establishment of local village committees to advise the program and handle grievances.

The Harvesters' Association believes that this approach to income support will:

- reduce welfare dependency (as already witnessed in northern Quebec with a similar bush economy support program),
- increase and stabilize participation in the bush economy and ensure full and sustainable use of available resources,
- realize and stabilize the full the wealth generation capacity of northern communities - thereby increasing the well-being of the extended families of harvesters (it is estimated, for example, that the population directly dependent on trapping averages 3.8 times the number of trapping units),
- demonstrate that the society at large values the culture and way of life of the Cree people, and that this family-based way of life is an effective model for sustainable development in the north,
- provide encouragement to younger people by demonstrating the viability of the bush economy and way of life,
- reduce social service costs through the resulting increase in the mental, physical and economic well-being of the communities involved.

Appendix three

The Australian Community Development Employment Program for Aboriginal Communities.

The CDEP works as follows in Australian Aboriginal communities:

If 'X' number of individuals and their dependents receive social assistance benefits of amount 'Y' each, then the product of 'XY' is transferred to the community as a lump sum. There is no time limit on the use of the funds and it recognizes traditional Aboriginal community activities as valid employment. That is, the funds can be used to supplement income from or to pay for traditional activities. This concept is a partial adaptation of the James Bay Cree-Neskapi Income Security Program for persons engaged in hunting, trapping and fishing.

The Australian model has the following **positive** features:

- avoids stigma attached to social assistance which - in the case of First Nations - often spills over to the stigmatization of the entire community;
- individuals do not have to continue to meet the requirements of a needs test;
- with some qualification the community decides how the income is distributed;
- the community retains considerably more control over social and economic changes.

Some **problems** with the Australian model are:

- because payments are made to the community as a whole, supplementary benefits (such as Special Needs) are not available to individuals;
- through employment in Australian society persons qualify for other benefits (eg. Unemployment Insurance) which are not available to Aboriginals under the Community Employment Program. Thus, the Australian government in effect continues to regard it as assistance rather than as a transfer grant;
- because benefits are paid out as wages a single person can receive as much as a family. Conversely, a family has to work longer in order to receive the same level of benefit entitlement. Apparently the guidelines are being revised. Of course, the problem of the relationship between wages and family size is true in any wage economy.

Appendix four

Synopsis Of Consultants' Input and Consultation to Date First Nations Consultation

The First Nations Project Team attended the annual Ontario Native Welfare Administrators Association Conference October 23, 24, 1991.

The participants at the conference were the Ontario Native Welfare Administrators and in addition the Chiefs of Ontario and Band Councillors were to be invited for the presentation by members of the Project Team.

Funding arrangements necessary to facilitate the presence of the Chiefs of Ontario were not made available and consequently only a small number were able to participate.

The purpose of the presentation by the Project Team was:

1. To introduce the conference participants to the legislative options developed by the Project Team;

2. To provide information to First Nation Welfare Administrators necessary for their continuing dialogue with their Chiefs and Councillors about the proposed new legislation, and;

3. To obtain feedback from First Nation Welfare Administrators regarding the legislative options and the continuing consultation process with First Nations communities.

Grand Chief of the Chiefs of Ontario, Gordon Peters in his remarks to the conference stressed that this meeting was not a consultation process but only a preliminary stage. Consultation requires community dialogue. He stressed that First Nations planning requires consistency and coordination in the development and delivery of all Social Services. He stated that the overall goals for any reform must be based on the following principles:

- First Nation Community based
- First Nation Community determined
- First Nation Community controlled
- First Nation Community specific

Chief Peters identified three areas of immediate concern, the consultation process, the further development of models tied to the proposed options and the need for transitional planning as new legislation is implemented.

The participants broke into small groups and the Project Team members were assigned to a group where the five options that have been examined were presented.

As a result of the presentation these are some of the issues and concerns that were identified.

1. First Nation Welfare Administrators prefer not to make decisions about the options to be chosen. That is the role of the Chiefs.

2. The Welfare Administrators want more information about the models for delivery that would be possible with each of the options.

3. The Welfare Administrators can provide technical expertise to their individual Chiefs.

4. The process for consultation was inadequate and unorganized.

5. The facilitators are not fully aware of the First Nation communities' degree and level of development, inadequate representation of front-line people on the Project Team.

6. More information is needed about the role of the Province. Are social assistance services to be delegated to the municipalities?

7. Funding is a major concern. What are the costs associated with each option and how is the issue of reimbursement to be addressed within each option?

8. What risks are involved with the 1965 Indian Welfare Agreement? Can all social assistance be funded under the existing agreement?

9. Data base information is needed for determining the costs of social assistance in First Nation communities.

10. The delivery of social assistance to Band members and to non-band members is a primary concern in terms of native rights, jurisdictional issues and funding.

11. A consultation process with the Chiefs of Ontario is essential.

Consultation with Key Informants: Reviewing the Approaches

Introduction

In September 1991, the First Nations Project Team identified the need for a review of the approaches or options being considered by the First Nations' Welfare Administrators working in the field. Four key informants were selected on the basis of their working knowledge and experience of social assistance service delivery in First Nations Communities.

These key informants were asked to review the options and provide the team with their views and opinions on how each of these options would function in a First Nations Community. Prior to consenting, key informants specifically requested that the team consider their opinions as personal and not necessarily those of the First Nations they served. Three of

the four key informants responded and their reviews were received in October and December 1991. The following is a summary of their views and opinions.

Option #1: Continued application of general provincial legislation, but with specific changes reflecting First Nation concerns.

Respondents expressed concerns regarding service delivery and the 1965 Welfare Agreement.

The provision of social assistance by First Nations Communities was considered a positive change, however aboriginal rights and a cultural component for service delivery would not be protected under this option. For example, not all First Nations will agree to providing services to non-Band members. Transitional costs for the expansion of services in First Nations Communities was identified as being needed.

Extreme caution was advised in respect to the 1965 Indian Welfare Agreement. Negotiations for the provision of funding was considered a risky element in the process of change.

Opinions held that this option would maintain the status quo for First Nations in the delivery of social assistance.

Option #2: The inclusion in new legislation of a First Nations-specific, enabling section containing a recognition clause.

Respondents varied in their interpretation of this option. The 1965 Indian Welfare Agreement and implementation of new legislation were primary concerns.

The interpretation of the Enabling Section and the Recognition Clause solicited comments such as "a step in the right direction" and "a process to negotiate the future service delivery to our First Nations" and this seems to contradict what we are really after." The range of opinions on this option appears to be dependent on the interpretation of flexibility and opting-in and opting-out.

With regard to the 1965 Agreement, it was the opinion that First Nations must be consulted and be parties to any changes in this agreement.

Under this option, the delivery of social assistance by First Nations is considered to be a positive change. However, the implementation process is expected to be lengthy and will require a time-consuming consultation with First Nations. A concern was expressed that the province would retain jurisdiction over social welfare legislation in First Nation Communities.

Option #3: The introduction of separate First Nation specific, provincial social assistance legislation.

Respondents expressed concerns for the issue of powers and authorities and funding under this option.

Generally, this option was viewed as acceptable, however the retention of powers and authorities by the province was not seen as a positive aspect. The positive changes afforded

within this option, were those that empowered First Nation Communities to design, develop and deliver culturally appropriate services and programs.

Again, funding the delivery of services is a central issue and apprehension about the government imposing funding limitations was expressed-fixed budgets do not work.

Option #4A: The introduction of changes to the Indian Act permitting First Nations to introduce social services by-laws;

Opinions implied that major concerns regarding this option were jurisdictional powers of the province and funding sources.

Generally, this opinion was viewed as questionable. For example, how can First Nations by-pass provincial jurisdiction in social welfare legislation? It was stated that First Nations are not ready for this alternative. It was also stated that this option would be placing control of First Nations social welfare in the hands of the federal government, which would be a case of history repeating itself.

On the other hand, it would be reminding the federal government of their financial responsibility in First Nation Communities. Apprehension was expressed toward the federal government and the practice of capping funds.

Option #4B: The introduction of federal First Nation social services legislation.

Under this option, funding and powers and authorities continue to be primary concerns. This option does not appear feasible as the powers and authorities would transfer to the federal government. Funding under the 1965 Indian Welfare Agreement would no longer be possible as it is a bilateral agreement.

Option #5: The implementation of social assistance legislation within First Nations

The recognition of First Nations inherent right to self government is paramount to this option, however it is generally implied that some First Nations are not ready at this time. It was also viewed as a complex jurisdictional issue that requires boundaries and definitions prior to the enactment of legislation.

Summary

The intent of this review was to obtain the views and opinions of social assistance service delivery agents on the legislative options or approaches developed by the First Nations Project Team. The purpose was not to ask respondents to recommend a particular option.

In summary the central issues identified by key informants currently working in the field of social assistance in First Nations Communities, appear to be:

- Powers and Authorities
- Funding, and
- Service Delivery.